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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

IN RE R.M., a Person Coming Under the
Juvenile Court Law.

H037810
(Santa Clara County
Super. Ct. No. JV37363C)

THE PEOPLE,

Plaintiff and Respondent,

v.

R.M.,

Defendant and Appellant.

The minor, R.M., appeals from a dispositional order, following the finding by the juvenile court that he committed second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)).¹ The court placed the minor on probation with various terms and conditions.

On appeal the minor first argues that the juvenile court erred by finding that he committed the robbery. According to the minor, there was “sufficient evidence to leave a trier of fact with reasonable doubt” as to whether he was present during the robbery, or whether it was actually his twin brother who was present, and thus the petition against

¹ Further unspecified statutory references are to the Penal Code.

him should have been dismissed. Second, the minor contends that the court committed prejudicial error by failing to advise his twin brother, who testified at the minor's jurisdictional hearing, of the privilege against self-incrimination, the possible consequence of testifying, and the right to counsel, all pursuant to rule 5.548(a) of the California Rules of Court.²

For reasons that we will explain, we will affirm the dispositional order.

BACKGROUND

The Prior Petitions

In July 2010, a petition was filed under Welfare and Institutions Code section 602 alleging that the minor, then age 16, possessed a billy (former § 12020, subd. (a)(1); count 1) and carried a dirk or dagger concealed on his person (former § 12020, subd. (a)(4); count 2). The minor later admitted the allegations in the petition. The juvenile court declared the minor a ward of the court, placed him on probation with various terms and conditions, and ordered him to serve 30 actual days on the community release program.

In November 2010, another petition was filed under Welfare and Institutions Code section 602 alleging that the minor cultivated marijuana (Health & Saf. Code, § 11358). On April 25, 2011, the petition was dismissed in the interests of justice on motion of the prosecutor.

The Most Recent Petitions

The next day, on April 26, 2011, a petition was filed under Welfare and Institutions Code section 602 alleging that the minor, then age 17, committed second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)) in January 2011.

² All further rule references are to the California Rules of Court.

In August 2011, another petition was filed under Welfare and Institutions Code section 602 alleging that the minor possessed a switchblade knife (former § 653k, a misdemeanor) in June 2011.

The Jurisdictional Hearing Evidence Regarding the Robbery

A contested jurisdictional hearing was held on November 15, 2011, concerning the robbery. The evidence presented at the hearing included the following.

The victim testified that on January 26, 2011, he and his friend, M.D., were at a Carl's Jr. restaurant to get food and "hang out" after school. Four of the victim's other friends were eating at a table next to them. A group of three individuals came into the restaurant and walked past. The group of four who were sitting started saying "'square bear' and things like that," and the group of three who had just walked in "started saying things back." The victim and M.D. "kind of ignored" the argument although it "kept going and kept going." After the argument, the group of three left the restaurant, but then returned. The group of four, who had been involved in the earlier argument, asked the group of three, who had reentered the restaurant, to step outside so they could "settle it," but the group of three refused. Eventually the group of three exited through the front door of the restaurant and the group of four left through the back door.

The group of three subsequently reentered the restaurant and asked the victim and M.D. where the group of four had gone. The victim and M.D. indicated that they did not know. The group of three left the restaurant.

The group of three subsequently reentered the restaurant along with T. and another individual. Of this group of five individuals, T. started questioning the victim and M.D. about where the group of four had gone. T. asked, "Can we see your phone? Can we get their phone number?" The victim and M.D. indicated that they did not know where the group had gone, that they could not help, and said, "We're sorry." The victim and M.D. continued being questioned by the group of five individuals.

The group of five eventually left the restaurant through the back door. The victim testified that subsequently, “all five people came in,” including T. and the minor. This group of five proceeded to attack the victim by punching him on the top of his head. The victim testified that the minor punched him two or three times. Subsequently, T. took the victim’s cell phone from his hand, and another individual (not the minor) took the victim’s MP3 music player from his pocket. The entire group of five individuals then ran out the back door. The victim was afraid and was bleeding as result of the attack. He eventually went to the hospital. M.D., who was with the victim at the restaurant, was not attacked.

The victim identified the minor at the jurisdictional hearing. The victim testified that he knew the minor and his twin brother from high school. The victim explained that he could tell the difference between the twins because the minor was taller, bigger built, and had moles on his face. He later admitted that it would not surprise him to learn that the minor and his brother were almost identical heights. The victim testified that there was one mole above the minor’s right lip. At the jurisdictional hearing, the Court “affirm[ed] that there is a slight mole in the general location described by the [victim].” The victim also testified that at the time of the incident, the minor was wearing short sleeves and that there was nothing on his arms. The victim further testified that the minor was best friends with T., who was in the group of five that attacked him. The victim testified that the minor’s twin brother was not present during the incident.

The victim spoke with Officer Meeker the same day as the incident. When he initially spoke with the officer, the victim did not indicate that the minor was present. The victim admitted at the jurisdictional hearing that, when he spoke to Officer Meeker, he was not able to identify the individuals who assaulted him as well as he could at the jurisdictional hearing. At some point after the incident, the victim viewed two photographs in the presence of the prosecutor and the minor’s counsel and was able to “decipher” who was the minor and who was the twin brother.

The minor's twin brother testified on the minor's behalf that he (the brother) was at the restaurant with T. and another individual for about 15 minutes on the day of the incident, and that the minor was not at the restaurant. The brother had last seen the minor at home with their mother and playing a video game. The brother testified that he did not know the victim but had seen him at school. Regarding the altercation at the restaurant, the brother testified that it occurred "[s]omewhere around" two, three, or four in the afternoon. He initially testified that he did not see anyone hitting the victim, but he subsequently testified that he was outside the restaurant talking to five others when he saw the victim being hit inside the restaurant. The brother ran back inside the restaurant because his friend, T., was also inside and the brother wanted to see "what was going on." The brother never saw T. hitting the victim. While being cross-examined about why he went back inside, the brother twice indicated to the prosecutor that he was confused by the questions and that what happened was a "long story." The brother testified that at some point, he left the restaurant and went home. The restaurant was three blocks from his house and it took him three minutes to get home. His mom, brother, and other family members were present at the house, and he saw them about ten minutes after arriving home. The brother had a large tattoo of the word "East" on his right forearm, and the word "Side" on his left forearm. He testified that he was wearing short-sleeves when he was at the restaurant on the day of the incident. He also testified that the minor has had tattoos for one or two years. The brother further testified that he does not have moles on his face, but that the minor does.

The minor's mother testified on the minor's behalf that on the date of the incident, the minor was on the community release program. She drove the minor to school that day and then picked him up after school ended at 12:30 p.m. They went straight home, and the minor did not leave the house prior to nighttime. The mother testified that she did not know where the minor's brother was that afternoon, and that she did not recall seeing him at home until five or six in the evening.

The minor testified in his own behalf that he was not at a Carl's Jr. restaurant in January 2011, and that he did not witness any altercation at a Carl's Jr. restaurant during that timeframe. Further, he had never seen the victim in school and did not know him. At some point, an officer spoke with the minor about the case. The minor told the officer that he remembered the day and that it was a Sunday, but he later told the officer that it was a different day. The minor testified that the officer was "trying to confuse" him. He testified that he told the officer, "You got the wrong guy." The minor further testified that T. was not a close friend of his, but was a close friend of his twin brother. According to the minor, his mother or father always dropped him off and picked him up from the school that he began attending in January 2011. He indicated that he was on the community release program but not required to wear an ankle bracelet.

M.D., who was the victim's friend and who was present during the altercation at Carl's Jr., testified that he did not know the minor or his twin brother. According to M.D., there had been "[a] couple guys with tattoos" at the restaurant, but he did not remember the specific tattoos at the jurisdictional hearing. He recalled speaking with Amanda Freel, an investigator, about tattoos on the arms of a couple of individuals, but denied telling her "what the tattoo said or what they were."

Freel, a licensed private investigator employed by the minor's counsel, testified on the minor's behalf that she interviewed M.D. on June 21, 2011, approximately five months prior to the jurisdictional hearing. M.D. had indicated to her that he saw someone at the restaurant with particular characteristics. In response to the prosecutor's hearsay objection to the further question of what M.D. told Freel, the minor's counsel indicated that the evidence he intended to elicit from Freel regarding "East Side" tattoos was "not offered for the truth of the matter asserted" but rather "for impeachment purposes." Freel thereafter testified that M.D. reported seeing a person with an "East Side" tattoo. Freel further testified that she showed M.D. a photograph of the "East Side" tattoos on the

forearms of the minor's twin brother, and M.D. stated, " 'Oh, yeah. I remember that. He was there.' "

The Court's Findings Regarding the Robbery

During argument, the prosecutor contended that it was "clear" a robbery occurred and indicated that liability was based on an aiding and abetting theory. The prosecutor asserted that the "issue here is simply [identification]. Was it [the minor] or was it [his twin brother]." According to the prosecutor, it was the minor who had committed the crime. The prosecutor argued that the victim's testimony was "very detailed," he had identified the minor and explained how he was able to distinguish the minor from his brother, and it was "very clear" that the victim was telling the truth. The prosecutor challenged the credibility of other witnesses, including the minor's twin brother.

The minor's counsel "suggest[ed]" to the juvenile court that the minor was "factually innocent." The minor's counsel contended that the minor's witnesses had testified "very credibly," that the victim was "honest" but "mistaken in his belief" about which brother was present during the incident, and that there was reasonable doubt whether the minor was present.

After hearing argument from counsel, and after a short recess, the juvenile court found true the allegations in the April 2011 petition that the minor had committed second degree robbery. The court then "comment[ed] on some of the evidence" so that the minor would "understand[] the Court's view." The court stated: "Frankly, the testimony of [the victim] was rather compelling and very persuasive, very clear-cut in its recollections not only how the incident took place but specifically on the descriptions of both the minor . . . and his brother [¶] I reviewed the testimony quite clearly. He knows you and he knows your brother. He knows the difference between the two of you. There is no doubt in his mind as to who was the perpetrator here, down to the details of the moles on your face and the tattoos on your brother. [¶] He's also very, very clear as to who played what role, and it's clear that his recollection and distinction between you

and your brother is clear. The testimony of your brother, on the other hand, was not very convincing at all. As a matter of fact, he was very, very inconsistent in his testimony in the eyes of the Court. [¶] One of the key issues or one of the key parts of his testimony was his point of return to the home after this incident. He says he went right after, within 15 minutes or so of the incident, to the home and that he saw you, mom, your other brother and sister. This is clearly contradicted by the testimony of [the minor's mother]. She says that he did not return home, to the best of her recollection, somewhere around five or six. [¶] The testimony of [the minor's mother] is truthful in a lot of respects. I don't doubt the truthfulness of her testimony. I do question the recollection of the event as she testified to. There was a question as to whether or not this took place on a Sunday or a Thursday, whether or not this was a school day or non-school day. Frankly, I think she wants to believe that [the minor] did not take part in this event, but I think the testimony of the victim in this case is clear that he did."

Following the juvenile court's true finding regarding the robbery, the minor admitted the allegation in the August 2011 petition that he had possessed a switchblade knife (former § 653k, a misdemeanor).

On December 6, 2011, the juvenile court adopted the probation department's recommended disposition. The court continued the minor on probation with various terms and conditions, including that he complete 50 hours of public service work.

DISCUSSION

Sufficiency of the Evidence

The minor contends that "there was sufficient evidence to leave a trier of fact with reasonable doubt as to whether [the minor] or his twin brother was present at the Carl's Jr. during the incident. That reasonable doubt entitled [the minor] to a dismissal of the petition filed against him." In making this argument, the minor relies on evidence presented at the jurisdictional hearing, as well as police reports that were *not* introduced into evidence but are contained in the record on appeal. The minor also argues that the

juvenile court's oral "explanation" for its ruling was not sufficient to support a finding that the minor was guilty beyond a reasonable doubt.

The Attorney General contends that substantial evidence supports the juvenile court's finding that the minor committed a robbery, and that the court's oral statements explained its reasoning.

"At the jurisdictional phase, the juvenile court decides whether the petition concerns a person described in [Welfare and Institutions Code] section 602." (*In re Eddie M.* (2003) 31 Cal.4th 480, 487 (*Eddie M.*); see Welf. & Inst. Code, § 701.) "[T]he petition cannot be sustained absent '[p]roof beyond a reasonable doubt supported by evidence [] legally admissible in the trial of criminal cases.' " (*Eddie M.*, *supra*, at p. 487; see Welf. & Inst. Code, § 701.)

On appeal, however, the test is " 'whether there is substantial evidence to support the conclusion of the trier of fact; it is not whether guilt is established beyond a reasonable doubt. [Citation.]' " (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1372 (*Ryan N.*)). The test is also not whether the defendant presented sufficient evidence to raise a reasonable doubt. (*People v. Battle* (2011) 198 Cal.App.4th 50, 61 (*Battle*) [the defendant's contention that he presented sufficient evidence to raise a reasonable doubt "misstates the standard of review concerning sufficiency of evidence"].) On appeal, "the critical inquiry is 'whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' [Citation.]" (*Ryan N.*, *supra*, at p. 1371.)

In undertaking this inquiry, "we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] We presume every fact in support of the judgment the trier of fact could have reasonably deduced from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact's

findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] ‘A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility.’ [Citation.]” (*People v. Albillar* (2010) 51 Cal.4th 47, 60 (*Albillar*).)

Thus, “in juvenile cases, as in other areas of the law, the power of an appellate court asked to assess the sufficiency of the evidence begins and ends with a determination of whether, on the entire record, there is *any* substantial evidence, contradicted or uncontradicted, which will support the decision of the trier of fact. [Citations.]” (*Ryan N.*, *supra*, 92 Cal.App.4th at p. 1373.) “ ‘Before the judgment of the trial court can be set aside for insufficiency of the evidence . . . , it must clearly appear that upon no hypothesis whatever is there sufficient substantial evidence to support it. [Citation.]’ [Citations.]” (*Id.* at p. 1372.) Moreover, in evaluating the minor’s challenge on appeal, we consider only the evidence admitted at the jurisdictional hearing. (See *Eddie M.*, *supra*, 31 Cal.4th at p. 487 [Evidence Code applies to jurisdictional hearing]; Welf. & Inst. Code, § 701 [“admission and exclusion of evidence” at jurisdictional hearing “shall be pursuant to the rules of evidence established by the Evidence Code and by judicial decision”].)

In this case, the minor does not dispute that a robbery was committed against the victim, and does not dispute that, to the extent that one of the brothers was present during the incident, that brother aided and abetted the robbery. The sole issue is whether there is sufficient evidence that the minor, rather than his twin brother, was present.

Viewing the evidence in the light most favorable to the prosecution, as we must (*Albillar*, *supra*, 51 Cal.4th at p. 60; *Ryan N.*, *supra*, 92 Cal.App.4th at p. 1371), we determine that there was sufficient evidence to support the finding by the juvenile court that the minor aided and abetted the robbery. The victim identified the minor at the jurisdictional hearing and testified that the minor was present during the incident and hit him multiple times. The victim further testified that the minor’s twin brother was not

present during the incident. The victim also explained how he was able to distinguish between the two brothers. On the issue of identity, “ ‘to entitle a reviewing court to set aside a jury’s finding of guilt the evidence of identity must be so weak as to constitute practically no evidence at all.’ [Citations.]” (*People v. Mohamed* (2011) 201 Cal.App.4th 515, 521.) In view of the victim’s testimony in this case, we determine that there was ample evidence to support the court’s finding that the minor was involved in the attack on and robbery of the victim.

The minor challenges the credibility of the victim, and cites to the testimony of various other witnesses, to support his contention that there was sufficient evidence to establish reasonable doubt as to which brother was present at the incident. As we explained above, the test on appeal is *not* whether the defendant presented sufficient evidence to raise a reasonable doubt. (*Battle*, *supra*, 198 Cal.App.4th at p. 61.) “If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also reasonably be reconciled with a contrary finding. [Citation.] ‘A reviewing court neither reweighs evidence nor reevaluates a witness’s credibility.’ [Citation.]” (*Albillar*, *supra*, 51 Cal.4th at p. 60.) Here, after reviewing the evidence presented at the jurisdictional hearing in the light most favorable to the judgment, without reweighing the evidence or reevaluating a witness’s credibility, we determine that there was substantial evidence to support the court’s finding that the minor was present during the incident and aided and abetted the robbery. (*Id.* at p. 60.)

The court found the victim’s testimony “rather compelling and very persuasive,” including the victim’s recollection of how the incident took place and the victim’s ability to differentiate between the minor and his twin brother. On appeal, the minor questions the court’s “strong reliance” on the victim’s testimony and points to certain other testimony by the victim, suggesting that less weight should have been given to the victim’s testimony. The minor’s contentions would require us to reweigh the evidence

and reevaluate the victim's credibility, which we cannot do on appeal. (*Albillar, supra*, 51 Cal.4th at p. 60.) The minor also argues that the "inconsistencies" cited by the court with respect to the testimony of his twin brother and mother "were not in fact inconsistent." After careful review of the evidence presented at the jurisdictional hearing and the court's oral statements explaining its finding, we determine that the factual conclusions drawn by the court were reasonable, and we are precluded from reversing the judgment "simply because the circumstances might also reasonably be reconciled with a contrary finding." (*Ibid.*)

Failure to Advise Witness

The minor next contends that the juvenile court committed error by failing to advise his twin brother of the privilege against self-incrimination, the possible consequence of testifying, and the right to counsel, all pursuant to rule 5.548(a). The minor argues that it is "reasonably probable . . . the outcome of the trial would have been more favorable" to him had his brother been so advised.

The Attorney General contends that the minor has forfeited the claim by failing to raise it below. The Attorney General also argues that the right to remain silent is "personal to the witness" and that the minor may not assert his brother's Fifth Amendment rights. Lastly, the Attorney General contends that, even if the minor may assert the claim on appeal, he fails to demonstrate prejudice.

Rule 5.548(a) states: "Privilege against self-incrimination [¶] If a person is called as a witness and it appears to the court that the testimony or other evidence being sought may tend to incriminate the witness, the court must advise the witness of the privilege against self-incrimination and of the possible consequences of testifying. The court must also inform the witness of the right to representation by counsel and, if

indigent, of the right to have counsel appointed.”³ Assuming, without deciding, that (1) the minor may raise the court’s failure to advise his brother under rule 5.548(a), and (2) the minor has not forfeited the claim on appeal, we determine that any error was harmless under any standard of review. (See *Chapman v. California* (1967) 386 U.S. 18, 24 (*Chapman*); *People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*).)

In claiming that he was prejudiced by the error, the minor argues: “If [his brother] would have been advised of his rights it is reasonably probable that [his brother] could have been offered immunity for his testimony or had the advice of counsel to assist him rather than giving potentially incriminating testimony as a juvenile without being advised of his rights. If [his brother] would have been offered immunity or had been advised by counsel he would have been able to more easily and clearly testify. Given how heavily [his brother’s] testimony was weighed against the testimony of [the victim] it would have made a difference in the hearing against [the minor].” The minor further argues in his reply brief that his brother testified “hesitantly,” and that if his brother had been advised

³ Rule 5.548 also provides: “(b) Authority of judge to grant immunity [¶] If a witness refuses to answer a question or to produce evidence based on a claim of the privilege against self-incrimination, a judge may grant immunity to the witness under (c) or (d) and order the question answered or the evidence produced. [¶] (c) Request for immunity—section 602 proceedings [¶] In proceedings under section 602, the prosecuting attorney may make a written or oral request on the record that the court order a witness to answer a question or produce evidence. The court must then proceed under Penal Code section 1324. [¶] (1) After complying with an order to answer a question or produce evidence and if, but for those Penal Code sections or this rule, the witness would have been privileged to withhold the answer given or the evidence produced, no testimony or other information compelled under the order or information directly or indirectly derived from the testimony or other information may be used against the witness in any criminal case, including any juvenile court proceeding under section 602. [¶] (2) The prosecuting attorney may request an order granting the witness use or transactional immunity. [¶] . . . [¶] (e) No immunity from perjury or contempt [¶] Notwithstanding (c) or (d), a witness may be subject to proceedings under the juvenile court law or to criminal prosecution for perjury, false swearing, or contempt committed in answering or failing to answer or in producing or failing to produce evidence in accordance with the order.”

of his rights, he “would have had the opportunity to be represented by counsel” and his testimony “would have been more clear and thus viewed as more credible.” His brother “would have testified in a manner that would have been better received by the Court”

We are not persuaded by the minor’s argument. The juvenile court found the brother’s testimony to be “not very convincing” and “very, very inconsistent.” The minor does not suggest that the substance of his brother’s testimony would have been any different had his brother been advised of his rights pursuant to rule 5.548(a). Moreover, the court found the victim’s testimony “rather compelling and very persuasive,” including the victim’s recollection of how the incident took place and the victim’s ability to differentiate between the minor and his twin brother. In view of the substance of the witnesses’ testimony and the court’s oral statements concerning its evaluation of the witnesses, we determine that under any standard of error (*Chapman, supra*, 386 U.S. at p. 24; *Watson, supra*, 46 Cal.2d at p. 836), the court’s failure to advise the minor’s brother under rule 5.548(a) was harmless.

DISPOSITION

The dispositional order of December 6, 2011, is affirmed.

BAMATTRE-MANOUKIAN, J.

WE CONCUR:

ELIA, ACTING P.J.

MÁRQUEZ, J.